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85-3461/2

16 OCT 1985

MEMORANDUM FOR: Chief, Legislation Division, OLL

ATTENTION:

STAT

FROM:

Director of Security

SUBJECT: Draft GAO/ISOO Letter on H.R. 2994:
Request for Comments

REFERENCE: Mtpl adse memo fm OLL (OLL 85-2820/1) dtd
7 Oct 85, Same Subject

The Office of Security interposes no objection to the draft
GAO/ISOO letter.

STAT

cc: EO/DDA

OS 5-2239

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85-3461/1

15 OCT 1985

MEMORANDUM FOR:

[Redacted]

STAT

Legislation Division, OLL

FROM:

[Redacted]

STAT

Director of Information Services, DA

SUBJECT:

Comments on Draft GSA/ISOO Letter on H. R. 2994

We have no objection to the GSA/ISOO draft views letter concerning H. R. 2994.

[Redacted]

STAT

DDA/OIS/IRMD/IMB/ [] (15 October 1985)

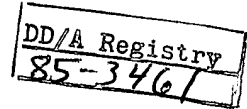
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Distribution:

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- 1 - IMB Subject

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OLL 85-2820/1
7 October 1985

MEMORANDUM FOR: DDA; DDI; DDS&T; DDO; GENERAL COUNSEL;
COMPTROLLER; C/SECOM; C/IMS/DDO; C/PCS/DDO;
D/OIS/DDA; D/OS/DDA; C/ICAD/OGC; C/ALD/OGC;
DC/LIT/OGC

FROM:

Legislation Division
Office of Legislative Liaison

STAT

SUBJECT: Draft GAO/ISOO Letter on H.R. 2994:
Request for Comments

1. Attached for your review and comment please find a copy of a draft views letter prepared by the Information Security Oversight Office (ISOO) of the General Services Administration (GSA) on H.R. 2994 (also attached). The letter has been sent to this Office by the Office of Management and Budget (OMB) to obtain the Agency's comments. H.R. 2994, introduced by Representative Bennett (third ranking member of the House Armed Services Committee), would establish a statutory classification system to supplant the current classification system established by Executive Order and would provide penalties for the unauthorized disclosure of classified information, i.e., "leaks" legislation.

2. H.R. 2994 is the successor to H.R. 271 which was introduced by Representative Bennett on January 3 of this year. You will recall that H.R. 271 was circulated for comment within the Agency and that extensive comments were received. Ultimately, however, the Agency sent only a simple letter to Representative Bennett thanking him for his consideration of the "leaks" problem. This was done because the Agency determined that it could not support the bill's statutory classification scheme nor comment on the "leaks" portion of the legislation since a uniform position on that subject had not been reached within the Executive Branch.

3. H.R. 2994 modifies H.R. 271 in some ways, particularly in the "leaks" area. It does not appear, however, to alleviate the Agency's original concern about establishment of a statutory classification scheme nor its inability to proceed on "leaks" legislation in the absence of a uniform Executive position.

4. At this point, however, the Agency is not required to comment on or take other action in regard to H.R. 2994. The only action required is to comment on the GAO/ISOO letter. Since that letter indicates opposition to the bill, there would not seem to be any objection to the letter from the Agency's viewpoint. We would, however, appreciate any comments you may have.

5. As OMB has asked for the Agency's comments by 21 October 1985, we ask for your comments by Wednesday, 16 October 1985.

6. Your cooperation is most appreciated.

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Attachment
as stated

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99TH CONGRESS
1ST SESSION

H. R. 2994

To amend the National Security Act of 1947 to establish by law a system for the security classification and declassification of sensitive information relating to the national security, to define matters that may be classified, to require the protection of such information that is classified, whether in the executive, legislative, or judicial branches or in industry, to require the imposition of administrative penalties for improper classification of information, to provide criminal penalties for unauthorized disclosure of classified information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1985

Mr. BENNETT introduced the following bill; which was referred jointly to the Committees on Armed Services and Permanent Select Committee on Intelligence

A BILL

To amend the National Security Act of 1947 to establish by law a system for the security classification and declassification of sensitive information relating to the national security, to define matters that may be classified, to require the protection of such information that is classified, whether in the executive, legislative, or judicial branches or in industry, to require the imposition of administrative penalties for improper classification of information, to provide criminal penalties for unauthorized disclosure of classified information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) the National Security Act of 1947 is amended by
4 adding at the end thereof the following new titles:

5 "TITLE V—CLASSIFICATION AND DECLASSIFI-
6 CATION OF NATIONAL SECURITY INFORMA-
7 TION

8 "PURPOSE

9 "SEC. 501. The purpose of this title is to provide for the
10 establishment of a system for the classification and declassifi-
11 cation of information, the unauthorized disclosure of which
12 reasonably could be expected to cause a degree of damage to
13 the national security.

14 "SEC. 502. The President shall issue appropriate orders
15 or regulations, binding upon the departments and agencies of
16 the executive branch, which provide for the classification of
17 information in the interest of national security. Such order or
18 regulation shall, at a minimum, provide:

19 "(a) National security information shall be classified at
20 one of the following three levels:

21 "(1) The classification 'Top Secret' shall be ap-
22 plied to information, the unauthorized disclosure of
23 which reasonably could be expected to cause excep-
24 tionally grave damage to the national security.

1 “(2) The classification ‘Secret’ shall be applied to
2 information, the unauthorized disclosure of which rea-
3 sonably could be expected to cause serious damage to
4 the national security.

5 “(3) The classification ‘Confidential’ shall be ap-
6 plied to information, the unauthorized disclosure of
7 which reasonably could be expected to cause damage
8 to the national security.

9 Except as otherwise provided by statute, no other terms shall
10 be used to identify classified information as such.

11 “(b)(1) The authority to originate the classification of
12 information may be exercised only by the President, by the
13 heads of such agencies, and by such officials in the Executive
14 Office of the President, as the President may designate by
15 publication in the Federal Register to have such authority,
16 and by such other officials as may be designated by them to
17 have such authority.

18 “(2) Designations of original classification authority
19 shall be kept to the smallest number practicable as deter-
20 mined by the President and shall be in accordance with Pres-
21 idential regulations published in the Federal Register.

22 “(c)(1) Information shall be considered for classification
23 if it concerns—

24 “(A) military plans, weapons, or operations;

1 “(B) vulnerabilities or capabilities of systems, in-
2 stallations, projects, or plans relating to the national
3 security;

4 “(C) foreign government information;

5 “(D) intelligence activities (including special ac-
6 tivities), or intelligence sources or methods;

7 “(E) foreign relations or foreign activities of the
8 United States;

9 “(F) scientific, technological, or economic matters
10 relating to the national security;

11 “(G) United States Government programs for
12 safeguarding nuclear materials or facilities;

13 “(H) cryptology;

14 “(I) a confidential source; or

15 “(J) other categories of information that are relat-
16 ed to the national security and that require protection
17 against unauthorized disclosures as determined by the
18 President.

19 “(2) Information that is determined to concern one or
20 more of the categories in subsection (c)(1) shall be classified
21 when an original classification authority also determines that
22 its unauthorized disclosure, either by itself or in the context
23 of other information, including for this purpose, other infor-
24 mation that may be in the public domain, reasonably could be

1 expected to cause a degree of damage to the national
2 security.

3 “(3) Information shall be classified as long as required
4 by national security considerations.

5 “(d)(1) When it can be determined, a specific date or
6 event for declassification shall be set by the original classifi-
7 cation authority at the time the information is classified
8 originally.

9 “(2) Information shall be declassified as soon as national
10 security considerations permit. Information shall be declassi-
11 fied by the official who authorized the original classification,
12 if that official is still serving in the same position; the origina-
13 tor's successor; a supervisory official of either; or officials del-
14 egated such authority.

15 “(3) In accordance with procedures established by the
16 President, United States citizens or permanent resident
17 aliens may request a review of classified information that is
18 identified with sufficient specificity to determine if such infor-
19 mation may be declassified and released.

20 “(4) In accordance with procedures established by the
21 President, permanently valuable classified information of the
22 Government shall be reviewed for purposes of declassification
23 and release to the public.

24 “(e)(1) In no case shall information be classified for the
25 sole purpose of concealing violations of law, inefficiency, or

1 administrative error; preventing embarrassment to a person,
2 organization, or agency; restraining competition; or prevent-
3 ing or delaying the release of information that does not re-
4 quire protection in the interest of national security. Any offi-
5 cial who willfully classifies information in violation of this
6 subsection shall be subject to such administrative disciplinary
7 action, including suspension, as may be ordered by such offi-
8 cial's superiors.

9 “(2) Basic scientific research information not clearly re-
10 lated to the national security may not be classified.

11 “INFORMATION COVERED BY THE ATOMIC ENERGY ACT OF
12 1954

13 “SEC. 503. Nothing in this title shall supersede any re-
14 quirement made by or under the Atomic Energy Act of 1954.
15 Information designated as ‘Restricted Data’ shall be handled,
16 protected, classified, and declassified in conformity with the
17 provisions of the Atomic Energy Act of 1954, as amended,
18 and regulations issued pursuant thereto.

19 “SEC. 504. Nothing in this title shall be construed to
20 limit or preclude the President of the United States from car-
21 rying out his responsibilities under article II, section 2 of the
22 Constitution of the United States.

23 “FREEDOM OF INFORMATION ACT

24 “SEC. 505. Classified information shall be exempt from
25 the mandatory disclosure provisions of the Freedom of Infor-
26 mation Act (5 U.S.C. 552b).

1 "DEFINITIONS

2 "SEC. 506. For purposes of this title—

3 "(A) the term 'national security' means the na-
4 tional defense or foreign relations of the United States;

5 "(B) the term 'information' means any knowledge
6 or material, regardless of its physical form or other
7 characteristics, that is owned by, produced by or for,
8 or is under the control of the United States Govern-
9 ment;

10 "(C) the term 'agency' has the meaning provided
11 at section 552(e) of title 5, United States Code, unless
12 specifically used otherwise;

13 "(D) the term 'confidential source' means any in-
14 dividual or organization that has provided, or that may
15 reasonably be expected to provide, information to the
16 United States or matters pertaining to the national se-
17 curity with the expectation, expressed or implied, that
18 the information or relationship, or both, be held in con-
19 fidence;

20 "(E) the term 'original classification' means an
21 initial determination that information requires, in the
22 interest of national security, protection against unau-
23 thorized disclosure, together with a security classifica-
24 tion designation signifying the level of protection re-
25 quired; and

1 “(F) the term ‘classified information’ means infor-
2 mation that (1) is owned by, produced by or for, or is
3 under the control of the United States Government and
4 that (2) has been determined under this title or prior
5 Presidential executive orders to require protection
6 against unauthorized disclosure and (3) is so desig-
7 nated.

8 “EFFECTIVE DATE

9 “SEC. 507. The amendments made by this title of this
10 Act shall take effect at the end of the one-year period begin-
11 ning on the date of the enactment of this Act.

12 “TITLE VI—SAFEGUARDING CLASSIFIED
13 INFORMATION

14 “PURPOSE

15 “SEC. 601. The purpose of this title is to establish re-
16 quirements for the safeguarding of information classified in
17 accordance with title V of this Act.

18 “GENERAL RESTRICTIONS ON ACCESS

19 “SEC. 602. The President shall issue appropriate orders
20 or regulations binding on all departments and agencies of the
21 executive branch which provide for the safeguarding of infor-
22 mation classified pursuant to title V of this Act. The Presi-
23 dent of the Senate and the Speaker of the House of Repre-
24 sentatives shall issue rules governing the protection of such
25 information furnished the Congress, which shall be as similar
26 as feasible to those applicable to the executive branch. The

1 Chief Justice of the United States shall also issue rules bind-
2 ing upon the Federal courts governing the protection of such
3 information furnished such courts, which shall be as similar
4 as feasible to those applicable to the executive branch. At a
5 minimum, the orders or regulations issued by the President
6 shall provide:

7 “(A) Access to classified information shall be lim-
8 ited to United States citizens who have been deter-
9 mined by appropriate authority, after appropriate in-
10 vestigation or inquiry, to be trustworthy, and who have
11 a need for such access in order to perform lawful and
12 authorized governmental functions. The President shall
13 provide such investigative assistance as may be re-
14 quired by the legislative and judicial branches to carry
15 out this provision.

16 “(B) Information classified pursuant to title V of
17 this Act shall be identified with the appropriate classifi-
18 cation established by the office or agency which as-
19 signed the classification originally. Any person who in-
20 tentionally fails to identify classified information as
21 such in violation of this section shall be subject to such
22 administrative disciplinary action, including suspension,
23 as may be appropriate.

24 “(C) Classified information shall be used, proc-
25 essed, reproduced, transmitted, stored, and destroyed

1 only in ways, and by means, which effectively preclude
2 access by unauthorized persons.

3 “(D) Access to classified information by persons
4 who are not United States citizens or employees of the
5 Federal Government, or acting on its behalf, may be
6 permitted only by the President where he determines
7 that such access is in the interests of the United
8 States. To the extent practicable, categories of persons
9 who may obtain access under this subsection shall be
10 set forth in the regulations established by the Presi-
11 dent.

12 “DEFINITIONS

13 “SEC. 603. For purposes of this title, the definitions
14 provided in title V are applicable.

15 “EFFECTIVE DATE

16 “SEC. 604. The amendments made by this title of this
17 Act shall take effect at the end of the one-year period begin-
18 ning on the date of the enactment of this Act.

19 “TITLE VII—UNAUTHORIZED DISCLOSURE OF
20 CLASSIFIED INFORMATION

21 “PURPOSE

22 “SEC. 701. This title may be cited separately as the
23 ‘Unauthorized Disclosure of Classified Information Act of
24 1985’.

1 "SEC. 702. (a) Whoever, being an officer or employee of
2 the United States, willfully discloses, or attempts to disclose,
3 any lawfully classified information to a person who is not an
4 officer or employee of the United States and who does not
5 have authorized access to such classified information, shall be
6 fined not more than \$15,000, or imprisoned not more than
7 three years, or both.

8 "(b) No prosecution shall be brought under this provi-
9 sion unless the Attorney General of the United States, and
10 the head of the department or agency which originated the
11 classified information disclosed, have certified in writing that
12 the information in question was lawfully classified at the time
13 such disclosure occurred. Such determination shall be bind-
14 ing, as a matter of fact, upon any court in which such pros-
15 ecution may be brought.

16 "(c) For purposes of this title—

17 "(1) the term 'classified information' refers to in-
18 formation that is classified pursuant to title V of this
19 Act and information that had been classified before the
20 effective date of this Act under law or Executive order;

21 "(2) the term 'discloses' or 'disclose' means to
22 communicate, furnish, deliver, transfer, impact, pro-
23 vide, publish, convey, or otherwise make available.

24 "(3) the term 'authorized access' means having
25 authority or permission to receive classified information

1 or material within the scope of authorized governmen-
2 tal activities, or pursuant to the provisions of statute,
3 Executive order, directive of the head of any depart-
4 ment or agency who is empowered to classify informa-
5 tion, order of any United States court, or provisions of
6 any rule of the House of Representatives or resolution
7 of the Senate which governs the handling of classified
8 information by the respective House of Congress; and

9 “(4) the term ‘lawfully classified’ means that the
10 information (i) fell within a category established by or
11 pursuant to title V to which security classification may
12 be assigned; (ii) was identified or marked as classified
13 in accordance with applicable procedures; (iii) was re-
14 lated to the national security and its disclosure could
15 reasonably be expected to result in damage to the na-
16 tional security; and (iv) was classified by an official au-
17 thorized to assign such classification.”.

○